



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Philip K. Harker
97 Argilla Rd.
Andover, MA 01810

RE: Depot St. Belmont

ADMINISTRATIVE ORDER
No. WD 2004-11

July 14, 2004

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Philip K. Harker pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Philip K. Harker is an individual having a mailing address of 97 Argilla Rd, Andover, MA 01810.

C. STATEMENTS OF FACT AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11,I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, the Commissioner of DES has adopted Env-Ws 415 to implement this program.
3. On May 3, 2001, Mr. Harker purchased a tract of land identified on Town of Belmont Tax Map 234 as Lot 4 ("the Property"). The total acreage of the Property is either 188 acres or 208 acres, depending on the location of the town boundary with Northfield, the location of which is in dispute according to Belmont tax records.
4. On December 21, 2001, DES received Mr. Harker's Notification of Forest Management Activities Having Minimum Wetlands Impact ("Forestry Notification"). The Forestry Notification identified John Peterson as the logger of the Property.
5. On December 28, 2001, DES sent Mr. Harker a letter acknowledging the receipt of his Forestry Notification and which provided conditions under which the wetland crossings could be

constructed.

6. On October 2, 2002, DES received Mr. Harker's Notification of Trail Development Activities Having Minimum Wetlands Impact ("Trails Notification") for the Property. The Trails Notification identified three locations where wetland crossings would be constructed on the Property.

7. On October 9, 2002, DES sent Mr. Harker a letter acknowledging receipt of the Trails Notification and providing conditions under which the trails crossings could be constructed.

8. Following the completion of his logging operation (late summer 2002) Mr. Harker was approached by an excavator operator, Mark Roberts, who offered to remove stumps from the Property. Mr. Harker hired Mr. Roberts, who used a bulldozer to clear a large area.

9. On March 31, 2003, during an inspection on the adjacent property to the south, DES personnel noticed a large clearing and a logging road on the Property as well as potential wetland violations. DES personnel entered the Property and saw Mr. Harker excavating a trench into a wetland from a small cleared area with a small excavating machine. DES personnel recommended that Mr. Harker cease the activity he was engaged in, as it was a violation of RSA 482-A. Mr. Harker ceased dredging in the wetland. DES personnel observed a large cleared area to the north of Depot St. with potential violations of RSA 482-A and RSA 485-A:17. This was based on the observations that there was standing water on the Property, that part of the berm that surrounded the cleared area appeared to be in wetlands, that the cleared area appeared to be in excess of 100,000 square feet, and that the topography of the site is flat with a large forested wetland complex to the west.

10. On April 3, 2003, DES personnel met at the Property with Jeff Evans, of Landmark Land Services, ("Landmark") acting as Mr. Harker's agent. DES personnel walked the perimeter of the cleared area with a hand held Global Positioning System (GPS) unit to get an estimated measurement of the cleared and stumped area. During this inspection and subsequent data analysis the following was documented:

- a. Approximately 9.46 acres, or 412,080 square feet, of contiguous forested land had been cleared and stumped.
- b. The stumps and associated topsoil from the cleared area were deposited in a berm around the perimeter of the cleared area. The berm was approximately 10-15 feet high and 10-15 feet wide.
- c. Approximately a third of this cleared and stumped area was wetlands.
- d. A logging road that accesses the Property from Depot Road had a culvert that was placed too high and impounded water to the south, including the abutting property. The wetland crossing was 80 feet long.
- e. Approximately 2,250 square feet of slash, in an area measuring approximately 90 feet by

25 feet has been placed in the wetland to the west of the logging road.

f. A wetland area measuring approximately 20,000 square feet to the south of the 9.46 acre area had been cleared and stumped.

11. On April 29, 2003, Bruce Gilday of BAG consultants delineated portions of the wetlands at the Property.

12. On May 29, 2003, DES personnel met with Mr. Evans to review the delineation. DES personnel requested that all areas of impacted wetlands be shown on the surveyed plan that Mr. Evans was developing.

13. On June 19, 2003, DES personnel met with Mr. Gilday and Mr. Evans to clarify the jurisdiction of some of the areas of concern.

14. On June 23, 2003, DES issued a letter as a follow up to the inspections on March 31, 2003, April 3, 2003, May 29, 2003, and June 19, 2003, describing the violations and requesting a surveyed plan of the Property by June 30, 2003, and a restoration plan for the Property by July 25, 2003.

15. On June 30, 2003, DES received a plan labeled "Existing Conditions Plan" from Landmark depicting the extent of the disturbed area and the extent of disturbance to wetlands.

16. On August 15, 2003, DES received a Preliminary Grading Plan for the Property from Landmark (the "Plan"), as well as a narrative describing restoration activities that would occur.

17. On August 19, 2003, DES issued a Preliminary Restoration Plan Approval to Philip Harker for the first stage of restoration on the Property. The Preliminary Restoration Plan Approval approved the restoration plan, provided conditions for the work, requested an initial monitoring report by October 15, 2003, and requested submittal of a final Restoration Plan by November 3, 2003.

18. On August 29, 2003, DES received a letter from Landmark stating that the removal of the stump berm had been postponed due to wet conditions.

19. On September 24, 2003, DES personnel spoke with Landmark personnel, who stated that the restoration had been partially completed.

20. On February 24, 2004, DES personnel inspected the Property and observed that the fill had not been removed from jurisdiction.

21. On March 24, 2004, DES personnel spoke with Victor Virgin, owner of the abutting property to the east, who stated that he was negotiating a partial land sale with Mr. Harker for some of the impacted wetlands.

D. DETERMINATION OF VIOLATIONS

1. Philip K. Harker has violated RSA 482-A:3, I, by dredging and or filling approximately 140,766 square feet of wetlands in eight areas on the Property without a permit from DES.
2. Philip K. Harker has violated RSA 482-A:11, II, by constructing his forestry access road built under Forestry Notification 2001-2464 in such a manner as to impound water on the abutting property.
3. Philip K. Harker has violated 485-A:17, by grading, stumping, or otherwise altering terrain in an area in excess of 100,000 square feet without a Site Specific Permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Mr. Harker as follows:

1. By **August 1, 2004**, provide a restoration plan for approximately 140,766 square feet of wetlands impacted on the Property, including as depicted on the Plan:
 - a. Area A, measuring 47,143 square feet;
 - b. Area B., measuring 29,501 square feet;
 - c. Area C, measuring 19,191 square feet;
 - d. Area D, measuring 20,440 square feet;
 - e. Area E, measuring 18,579 square feet;
 - f. Area F, measuring approximately 2,500 square feet;
 - g. Area G, the access road, measuring approximately 1,600 square feet;
 - h. Area H, measuring 467 square feet; and,

Area I, measuring 1,345 square feet.
2. The plan shall include
 - a. proposed conditions after reestablishing the jurisdictional areas;
 - b. a detailed description of the proposed means of erosion control (silt fence, hay bales, etc) and stabilization of the restoration area;
 - c. a provision for removing the stump berm from jurisdictional wetlands, and for restoring topsoil from the berm to the jurisdictional areas;

- d. a provision to remove the access road in Area G and restore drainage to the abutting property to the east;
 - e. a detailed description of the proposed planting plan for the stabilization and revegetation of the restoration area and control of invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*);
 - f. a description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date;
 - g. a description of the method of documenting at least 75% survival of all vegetation planted during the restoration project. This should include at a minimum monitoring progress reports for two successive growing seasons following completion of the restoration project; and,
 - h. a provision to delineate the wetlands within the restoration site after 2 full growing seasons and document the delineation with data forms and depict the delineation on a site plan.
3. Retain a qualified wetland scientist to supervise the implementation of the restoration plan and to submit restoration monitoring reports in accordance with the approved plan.
 4. Implement the restoration plan no later than **August 31, 2004**, only after receiving written approval and as conditioned by DES.
 5. By **August 1, 2004**, either:
 - a. provide documentation that the previously disturbed upland areas do not require further stabilization; or,
 - b. submit a permanent stabilization plan for the Property to the Site Specific Bureau at DES in accordance with RSA 485-A:17.
 6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, *other than appeals*, to DES as follows:

Mary Ann Tilton
DES Water Division
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
email: mtilton@des.state.nh.us

F. APPEAL

Any party aggrieved by determinations D.1 and D.2 of this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve Mr. Harker of the obligation to comply with the Order.

Any person aggrieved by determination D.3 of this Order may appeal the Order to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or on the internet at <http://www.des.state.nh.us/desadmin.htm>.

G. OTHER PROVISIONS

Please note that RSA 482-A and RSA 485-A provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. Harker remains obligated to comply with all applicable requirements. DES will continue to monitor Mr. Harker's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Belknap County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E. Director
Water Division


Michael P. Nolin, Commissioner

Certified Mail/RRR: [7002 3150 0001 5411 0138]

cc: Gretchen Hamel, Administrator, DES Legal Unit ✓
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Belknap County Registry of Deeds
Belmont Selectmen
Belmont Conservation Commission
Belmont Planning Office
WB File # 2001-02464